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4 UNITED STATES DISTRICT COURT
5 DISTRICT OF NEVADA
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7 ENOMA IGBINOVIA,) 3:11-cv-00079-ECR-WGC
8 Plaintiff,) Order
9 vs.)
10 JAMES G. COX, et al.,)
11 Defendants.)
12)
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14 This is a pro se prisoner civil rights action filed pursuant to
15 42 U.S.C. § 1983. On February 10, 2012, we granted Defendants' Motion
16 for Summary Judgment (#50) with respect to Plaintiff's Fourteenth
17 Amendment Due Process claim, denied the motion with respect to
18 Plaintiff's First Amendment claim, and denied Plaintiff's Motion for
19 Summary Judgment (#26). Defendants have since filed a second Motion
20 for Summary Judgment (#62) with respect to Plaintiff's remaining First
21 Amendment claim. On May 14, 2012, we denied (#64) Plaintiff's motion
22 to reconsider (#55) our previous order (#50).

23 On September 6, 2012, Plaintiff filed a notice of appeal as to
24 the Court's previous orders (##50, 64). On June 21, 2012, Plaintiff
25 filed a motion for leave to proceed in forma pauperis (#77) and a
26 motion requesting a waiver of appeal filing fee (#79). The motions
27 are ripe and we now rule on them.
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1 Plaintiff requests that the Court allow him to proceed in forma
2 pauperis on appeal. Federal Rule of Appellate Procedure 24(a)(3)
3 provides that, in civil appeals, forma pauperis status granted by the
4 district court at any time continues automatically on appeal unless
5 such status is revoked. As companion to this rule, 28 U.S.C. §
6 1915(a)(3) further provides that the district court may revoke in
7 forma pauperis status for any civil appeal if that court determines
8 that the appeal is not taken in good faith. Furthermore, Ninth
9 Circuit case law equates the term "bad faith" in the statute to
10 include frivolous appeals. See Hooker v. Am. Airlines, 302 F.3d 1091
11 (9th Cir. 2002) (revocation of forma pauperis status is appropriate
12 where district court finds the appeal to be frivolous). A district
13 court may therefore revoke forma pauperis status where it determines
14 there is no merit to the appeal.

15 We find that Plaintiff's appeal is frivolous. The Court of
16 Appeals lacks jurisdiction over an appeal where the challenged order
17 is not final or appealable. See FED. R. CIV. P. 54(b); Chacon v.
18 Babcock, 640 F.2d 221, 222 (9th Cir. 1981) (order is not appealable
19 unless it disposes of all claims as to all parties or judgment is
20 entered in compliance with rule). No judgment has been entered in
21 this case because Plaintiff's First Amendment claim remains. The
22 orders (##50, 64) that Plaintiff seeks to challenge are therefore not
23 appealable and the appeal is frivolous.

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Edward C. Reed.
UNITED STATES DISTRICT JUDGE